

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed December 5, 2007 (Paper No. 20071128). Upon entry of this response, claims 1-11, 15-34, 37-44, 47-51, 54-57, 60-69, 71-72, 76-79, and 82-97 are pending in the application. In this response, claims 1, 11, 15-17, 19, 24-32, 37, 39-40, 47-51, 55, 60-68, 71-72, 76, 78, and 90-97 have been amended, and claim 70 has been cancelled without prejudice, waiver or disclaimer. Applicant respectfully requests that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

1. Rejection of Claims 1-4, 9, 16-17, 24, 26, 30-31, 34, 37-40, 60, 62, 66-67, 70, 76-79, 82-89, 91, and 95-96 under 35 U.S.C. §102

Claims 1-4, 9, 16-17, 24, 26, 30-31, 34, 37-40, 60, 62, 66-67, 70, 76-79, 82-89, 91, and 95-96 have been rejected under §102(e) as allegedly anticipated by *Ellis et al.* (U.S. 2002/0042913). Applicant respectfully traverses the rejection of claims 82 and 89, and submits that the rejection of claims 1-4, 9, 16-17, 24, 26, 30-31, 34, 37-40, 45, 52-53, 60, 62, 66-67, 70, 76-79, 83-88, 91, and 95-96 has been overcome by claim amendments made herein. A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

a. Independent Claim 1

Claim 1 has been amended to recite "providing a download option to a user, ***the download option*** associated with a purchasable recordable media content instance and ***comprising a plurality of times*** at which the purchasable recordable media content instance may be downloaded" (emphasis added). Applicant respectfully submits that *Ellis et al.* fails to teach, disclose or suggest at least this feature. FIG. 13 in *Ellis et al.* includes a user notification that indicates that a particular program is now available. Applicant will assume, for the sake of

argument, that this notification corresponds to a "download option" and that "now" corresponds to a time at which the program can be downloaded. Even so, this notification refers only to a single time. In contrast, amended claim 1 recites "the download option...comprising a plurality of times at which the purchasable recordable media content instance may be downloaded".

For at least the reason that *Ellis et al.* fails to disclose, teach or suggest this feature, Applicant respectfully submits that *Ellis et al.* does not anticipate amended claim 1. Therefore, Applicant requests that the rejection of claim 1 be withdrawn.

b. Independent Claim 37

Claim 37 has been amended to recite "a processor configured with the logic to provide a plurality of download options to a user, **each of the download options associated with the same purchasable recordable media content instance** and comprising an indication of when the purchasable recordable media content instance may be downloaded" (emphasis added). Applicant respectfully submits that *Ellis et al.* fails to teach, disclose or suggest at least this feature. The Office Action (pp. 5-6) alleges that FIGs. 11-13 in *Ellis et al.* disclose "a plurality of download options". More specifically, the Office Action alleges (p. 3) that "[e]ach program selection is a download option, as a user may select each program and multiple program selections are presented to a user". However, claim 37 has been amended to recite "each of the download options associated with the same purchasable recordable media content instance". Therefore, a program in FIGs. 11-13 in *Ellis et al.* cannot correspond to the feature now recited in amended claim 37.

For at least the reason that *Ellis et al.* fails to disclose, teach or suggest this feature, Applicant respectfully submits that *Ellis et al.* does not anticipate amended claim 37. Therefore, Applicant requests that the rejection of claim 37 be withdrawn.

c. Independent Claim 76

Claim 76 has been amended to recite "displaying a list of download options to a user, **each of the download options associated with the same one of a plurality of purchasable recordable media content instances**" (emphasis added). Applicant respectfully submits that *Ellis et al.* fails to teach, disclose or suggest at least this feature. The Office Action (pp. 5-6) alleges that FIGs. 11-13 in *Ellis et al.* disclose "a plurality of download options". More specifically, the Office Action alleges (p. 3) that "[e]ach program selection is a download option, as a user may select each program and multiple program selections are presented to a user". However, claim 76 has been amended to recite "each of the download options associated with the same one of a plurality of purchasable recordable media content instances". Therefore, a program in FIGs. 11-13 in *Ellis et al.* cannot correspond to the feature now recited in amended claim 76.

For at least the reason that *Ellis et al.* fails to disclose, teach or suggest this feature, Applicant respectfully submits that *Ellis et al.* does not anticipate amended claim 76. Therefore, Applicant requests that the rejection of claim 76 be withdrawn.

d. Independent Claim 78

Claim 78 has been amended to recite "a processor configured with the logic to provide a **list of download options to a user, the list associated with a purchasable recordable media content instance** and a time at which the purchasable recordable media content instance may be downloaded" (emphasis added). Applicant respectfully submits that *Ellis et al.* fails to teach, disclose or suggest at least this feature. The Office Action (pp. 5-6) alleges that FIGs. 11-13 in *Ellis et al.* disclose "a plurality of download options". More specifically, the Office Action alleges (p. 3) that "[e]ach program selection is a download option, as a user may select each program and multiple program selections are presented to a user". However, claim 78 has been amended to recite "the list associated with a purchasable recordable media content

instance". Even assuming, for the sake of argument, that the multiple programs in FIGs. 11-13 of *Ellis et al.* correspond to "a list", that list is associated with more than one program. Therefore, a program in FIGs. 11-13 in *Ellis et al.* cannot correspond to the feature now recited in amended claim 78.

For at least the reason that *Ellis et al.* fails to disclose, teach or suggest this feature, Applicant respectfully submits that *Ellis et al.* does not anticipate amended claim 78. Therefore, Applicant requests that the rejection of claim 78 be withdrawn.

e. Independent Claim 82

The Office Action (p. 9) summarily rejects claim 82 by stating that "[c]laim 78, 82, and 89 correspond to claim 76". However, claim 82 as presented in the last response contains features not recited in claim 76. For example, previously presented claim 82 recites "**each download option comprising a content quality description**" (emphasis added). Applicant respectfully submits that *Ellis et al.* does not disclose, teach, or suggest at least this feature. Because the Office Action failed to address this feature, the rejection is incomplete and deficient, and should be withdrawn.

Specifically, the MPEP states "Where a claim is rejected for any reason relating to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated." MPEP § 707.07(d). In the present application, the Office Action has failed to even allege that *Ellis et al.* teaches all the features of claim 82, much less indicates where all the features are allegedly disclosed, making it extremely difficult for Applicant to accurately and fairly respond. Accordingly, Applicant respectfully submits that any ensuing Office Action must be made non-final, as a more completely stated rejection would necessarily constitute "new grounds," which would not be necessitated by any amendments to claim 82.

f. Independent Claim 89

The Office Action (p. 9) summarily rejects claim 89 by stating that "[c]laim 78, 82, and 89 correspond to claim 76". However, claim 89 as presented in the last response contains features not recited in claim 76. For example, previously presented claim 89 recites "**each download option comprising a content quality description**" (emphasis added). Applicant respectfully submits that *Ellis et al.* does not disclose, teach, or suggest at least this feature. Because the Office Action failed to address this feature, the rejection is incomplete and deficient, and should be withdrawn.

Specifically, the MPEP states "Where a claim is rejected for any reason relating to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated." MPEP § 707.07(d). In the present application, the Office Action has failed to even allege that *Ellis et al.* teaches all the features of claim 89, much less indicate where all the features are allegedly disclosed, making it extremely difficult for Applicant to accurately and fairly respond. Accordingly, Applicant respectfully submits that any ensuing Office Action must be made non-final, as a more completely stated rejection would necessarily constitute "new grounds," which would not be necessitated by any amendments to claim 89.

g. Dependent Claims 2-4, 9, 16-17, 24, 26, 30-31, 34, 38-40, 45, 52-53, 60, 62, 66-67, 70, 77, 79, 83-88, 91, and 95-96

The rejection of dependent claim 70 is rendered moot by claim cancellation. Since independent claims 1, 37, 76, 78, 82, and 89 are allowable, Applicant respectfully submits that claims 2-4, 9, 16-17, 24, 26, 30-31, 34, 38-40, 45, 52-53, 60, 62, 66-67, 70, 77, 79, 83-88, 91, and 95-96 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2-4, 9, 16-17, 24, 26, 30-31, 34, 38-40, 45, 52-53, 60, 62, 66-67, 70, 77, 79, 83-88, 91, and 95-96 be withdrawn.

2. Rejection of Claims 18 and 54 under 35 U.S.C. §103

Claims 18 and 54 have been rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0042913) in view of *Greenwood et al.* (5,568,181). Applicant respectfully traverses this rejection. The addition of *Greenwood et al.* does not cure the deficiencies of *Ellis et al.* discussed above in connection with independent claims 1 and 37. Therefore, since independent claims 1 and 37 are allowable, Applicant respectfully submits that claims 18 and 54 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 18 and 54 be withdrawn.

3. Rejection of Claims 8, 44, and 87 under 35 U.S.C. §103

Claims 8, 44, and 87 have been rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0042913) in view of *Schaffer et al.* (6,934,964). Applicant respectfully traverses this rejection. The addition of *Schaffer et al.* does not cure the deficiencies of *Ellis et al.* discussed above in connection with independent claims 1, 37, and 82. Therefore, since independent claims 1, 37, and 82 are allowable, Applicant respectfully submits that claims 8, 44, and 87 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 8, 44, and 87 be withdrawn.

4. Rejection of Claims 5-7, 10-11, 15, 19, 21-22, 27, 32-33, 41-43, 46-47, 51, 55, 57-58, 63, 68-69, 84-86, 92, and 97 under 35 U.S.C. §103

Claims 5-7, 10-11, 15, 19, 21-22, 27, 32-33, 41-43, 46-47, 51, 55, 57-58, 63, 68-69, 84-86, 92, and 97 have been rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0042913) in view of *Haddad* (5,555,441). Applicant respectfully traverses this rejection. The addition of *Haddad* does not cure the deficiencies of *Ellis et al.* discussed above in connection with independent claims 1, 37, 82, and 89. Therefore, since independent claims 1,

37, 82, and 89 are allowable, Applicant respectfully submits that claims 5-7, 10-11, 15, 19, 21-22, 27, 32-33, 41-43, 46-47, 51, 55, 57-58, 63, 68-69, 84-86, 92, and 97 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 5-7, 10-11, 15, 19, 21-22, 27, 32-33, 41-43, 46-47, 51, 55, 57-58, 63, 68-69, 84-86, 92, and 97 be withdrawn.

5. Rejection of Claims 48-50 under 35 U.S.C. §103

Claims 48-50 have been rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0042913) in view of *Haddad* (5,555,441) in further view of *Hassell et al.* (2004/0128685). Applicant respectfully traverses this rejection. The addition of *Haddad* and *Hassell et al.* does not cure the deficiencies of *Ellis et al.* discussed above in connection with independent claim 37. Therefore, since independent claim 37 is allowable, Applicant respectfully submits that claims 48-50 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 48-50 be withdrawn.

6. Rejection of Claims 20, 23, and 56 under 35 U.S.C. §103

Claims 20, 23, and 56 have been rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0042913) in view of *Haddad* (5,555,441) in further view of *Schaffa et al.* (5,973,685). Applicant respectfully traverses this rejection. The addition of *Haddad* and *Schaffa et al.* does not cure the deficiencies of *Ellis et al.* discussed above in connection with independent claims 1 and 37. Therefore, since independent claims 1 and 37 are allowable, Applicant respectfully submits that claims 20, 23, and 56 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 20, 23, and 56 be withdrawn.

7. Rejection of Claims 25, 28-29, 61, 64-65, 80-81, 90, and 93-94 under 35 U.S.C. §103

Claims 25, 28-29, 61, 64-65, 80-81, 90, and 93-94 have been rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0042913) in view of *Haddad* (5,555,441) in further view of *Deshpande* (6,987,728). Applicant respectfully traverses this rejection. The addition of *Haddad* and *Deshpande* does not cure the deficiencies of *Ellis et al.* discussed above in connection with independent claims 1, 37, 78, and 89. Therefore, since independent claims 1, 37, 78, and 89 are allowable, Applicant respectfully submits that claims 25, 28-29, 61, 64-65, 80-81, 90, and 93-94 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 25, 28-29, 61, 64-65, 80-81, 90, and 93-94 be withdrawn.

8. Rejection of Claim 71 under 35 U.S.C. §103

Claim 71 have been rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0042913) in view of *Hooper* (5,414,455). Applicant respectfully traverses this rejection. The addition of *Hooper* does not cure the deficiencies of *Ellis et al.* discussed above in connection with independent claim 37. Therefore, since independent claim 37 is allowable, Applicant respectfully submits that claim 71 is allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claim 71 be withdrawn.

9. Rejection of Claim 72 under 35 U.S.C. §103

Claim 72 have been rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0042913) in view of *Greenwood et al.* (5,568,181) and further in view of *Hassell et al.* (2004/0128685). Applicant respectfully traverses this rejection. The addition of *Greenwood et al.* and *Hassell et al.* does not cure the deficiencies of *Ellis et al.* discussed above in connection

with independent claim 37. Therefore, since independent claim 37 is allowable, Applicant respectfully submits that claim 72 is allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claim 72 be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-11, 15-34, 37-44, 47-51, 54-57, 60-69, 71-72, 76-79, and 82-97 be allowed to issue. Any statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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